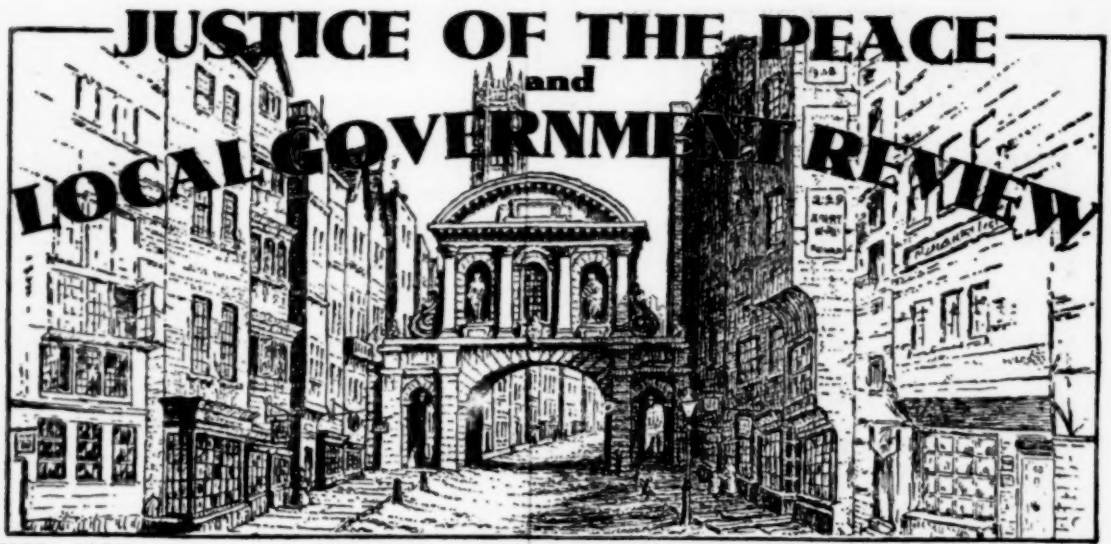

VOL. CXVI LONDON: SATURDAY, APRIL 5, 1952 No. 14

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REPORTS

Easter Appeals

YOU will derive greater benefit from your holiday if you have the conviction that some of your less fortunate fellow creatures are benefiting also by your thought.

•

HELP ANIMALS

BY HELPING

Our Dumb Friends League

GROSVENOR GARDENS HOUSE
VICTORIA, LONDON, S.W.1

266,206

Horses, Dogs, Cats Birds, etc., helped by the League last year

Donations & Legacies most gratefully acknowledged

M 134

Please, Mister. Can't you do nothing? Please!

Of course we can, Sonny. This is a Canine Defence Free Clinic — where the pet of the poorest receives treatment equal to the finest in the land.

•

Every National Canine Defence League Clinic has a full Hospital Service behind it . . . which is one of the reasons why we so earnestly request the practical help of all kind-hearted people.

CANINE DEFENCE

Chairman and Hon. Treasurer: Sir Robert Gower, K.C.V.O., O.B.E.
Secretary: R. Harvey Johns, B.Sc.
10, Seymour Street, London, W.1.

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JUSTICE?

THERE can never be complete justice for man; justice for animals is in its infancy—an emerging idea, not an accomplished fact.

Last year, in British laboratories, there were about 1,780,000 experiments on living animals, many of which caused great pain and suffering.

We ask you to write to us:—

British Union for the Abolition of Vivisection
(B.U.A.V.)
47, WHITEHALL, LONDON, S.W.1

for information. Study it, think the matter over, and then

Let Justice Be Done!

A request for bequests and donations is made by The Marine Society

(founded in 1756)

Nearly 350 boys were helped last year to go to sea either in the Royal or Merchant Navy by grants towards their pre-sea training, sea outfit of clothing or the premium which some Shipping Companies require when a boy is accepted as an apprentice or cadet.

Please send a donation to the Secretary, or remember in your Will

THE MARINE SOCIETY
Clark's Place, Bishopsgate, London, E.C.2

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.) Box Number, 1s. extra *Latest time for receipt* 10 *a.m. Thursday*

Published by JUSTICE OF THE PEACE LTD., Little London, Chichester, Sussex

Telephone : CHICHESTER 3637 (P.B.E.) *Telegraphic Address :* JUSLOCGOV, CHICHESTER

NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note :* Barristers, Solicitors, Local Government Officers, Police Officers and Social Workers are excepted from the provisions of the Order, as is employment in a managerial, professional, administrative or executive capacity.

BOOKS WANTED

COMPLETE volumes of the J.P. Reports (bound or unbound) required from 1932-1949 inclusive, also J.P. Review, 1938-1949 inclusive. Offer made for single volumes where no consecutive run available.—Box No. A7, office of this paper.

INQUIRIES

YORKSHIRE DETECTIVE BUREAU (Hoylands), **Ex-Detective Sergeant.** Member of B.D.A. and F.B.D. DIVORCE—CONFIDENTIAL ENQUIRIES, ETC., anywhere. Over 400 agents in all parts of the U.K. and abroad. 1, Mayo Road, Bradford. Tel. 26823, day or night.

PARKINSON & CO., East Boldon, Co. Durham. Private and Commercial Investigators. Instructions accepted from Solicitors only. Tel. : Boldon 7301. Available day and night.

BOROUGH OF GODALMING

Appointment of Town Clerk

APPLICATIONS are invited from barristers or solicitors with local government experience for the appointment of Town Clerk of Godalming and Clerk to the Godalming Joint Burial Committee at a salary of £1,100 per annum rising by annual increments of £50 to £1,400 per annum.

The appointment, which will be subject to a medical examination and will be determinable by three months' notice on either side, will be in accordance with the Conditions of Service set out in the second schedule of the recommendations of the Joint Negotiating Committee for Town Clerks and District Council Clerks.

Applications, stating age, qualifications and experience, together with copies of three recent testimonials, must reach me not later than the first post on Tuesday, April 8, 1952.

Canvassing, directly or indirectly, will disqualify.

A. V. RATCLIFF,
Town Clerk.

Municipal Buildings,
Godalming.
March 18, 1952.

COUNTY BOROUGH OF EASTBOURNE

Appointment of Assistant Solicitor

APPLICATIONS are invited for the appointment of Assistant Solicitor in my office at a salary of £735 per annum, rising by annual increments of £25 to £810 per annum (Grade VIII). The successful candidate will have to undergo a medical examination before appointment. Applications, giving age and full details of qualifications and experience, together with the names of three persons to whom reference may be made as to the applicant's character and ability, should reach me not later than April 18, 1952.

F. H. BUSBY,
Town Clerk.

Town Hall,
Eastbourne.
March 26, 1952.

BOROUGH OF DUNSTABLE

Appointment of Deputy Town Clerk

ON the instructions of the Council, applications are invited from persons having suitable Local Government experience for the above appointment at a salary in accordance with A.P.T. Grade V of the National Scales, £570 to £620 per annum.

Housing accommodation will be made available at least for a temporary period.

Further particulars of the duties of the appointment may be obtained from the undersigned, to whom applications with a copy of one recent testimonial and the names and addresses of two persons to whom reference may be made, should be forwarded to reach the undersigned not later than April 12, 1952.

JACK SMITH,
Town Clerk.

Municipal Offices,
Dunstable.
March 27, 1952.

CITY AND COUNTY BOROUGH OF COVENTRY

Senior Assistant Solicitor

SALARY A.P.T. IX. Applicants must have had very considerable experience in Local Government law and administration and of the administrative work of Council Committees. Particulars and conditions of appointment obtainable from me. Applications not later than April 26, 1952.

CHARLES BARRATT,
Town Clerk.

Council House,
Coventry.

BOROUGH OF COLWYN BAY

Appointment of Deputy Town Clerk

APPLICATIONS are invited from solicitors with experience in Local Government for the above appointment, at the salary of Grade VII A.P.T. (£685—£760).

The appointment is terminable on one month's notice on either side and is subject to the Local Government Superannuation Act, 1937. The successful applicant will be required to pass a medical examination.

Applications, stating age, experience and qualifications, accompanied by copies of three recent testimonials, should be delivered to me endorsed "Deputy Town Clerk" not later than Thursday, April 10, 1952.

Canvassing, directly or indirectly, will disqualify.

HAROLD E. BRAITHWAITE,
Town Clerk.

Town Hall,
Colwyn Bay.
March 22, 1952.

CITY OF BIRMINGHAM

Appointment of Full-time Female Probation Officer

APPLICATIONS are invited for the appointment of a full-time female Probation Officer for the City of Birmingham.

The appointment and salary will be in accordance with the Probation Rules, 1949 to 1952. Candidates must not be less than 23 years nor more than 40 years of age, except in the case of a serving officer.

The post is superannuable and the selected candidate will be required to pass a medical examination.

Applications (in own handwriting) giving age, present position, general qualifications and experience, should be sent with copies of three recent testimonials to the undersigned not later than fourteen days after the publication of this notice.

T. M. ELIAS,
Secretary to the
Probation Committee.

Victoria Law Courts,
Birmingham, 4.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

VOL. CXVI. No. 14. LONDON: SATURDAY, APRIL 5, 1952 Price 2s. 3d. (including Reports)

Pages 209-222 Offices: LITTLE LONDON, CHICHESTER, SUSSEX. [Registered at the General Post Office as a Newspaper] Price 1s. 3d. (without Reports)

NOTES of the WEEK

Questions from the Bench

It is often difficult for magistrates to resist the temptation to intervene and put questions to a witness during his examination or cross-examination. A keen magistrate may feel that he knows exactly what the witness should be asked and may not appreciate the way in which counsel or solicitor is eliciting facts. It has to be remembered, however, that the practitioner, who has his instructions, is in a better position to decide what questions should be asked and in what order, and only when the bench is at a loss to follow the story or to understand the purpose of seemingly unimportant questions is the chairman justified in interrupting. As a general rule, it is far better for the chairman to reserve any questions he wishes to put, and to put them as supplementary questions.

In *Heayns* v. *Heayns* (1952) (*The Times*, March 12) the Court of Appeal deprecated the putting of a large number of questions by a judge, though they did not reverse his decision. The Master of the Rolls, in the course of his judgment, referred to the observations of Lord Greene, M.R., in *Yuill* v. *Yuill* [1945] 1 All E.R. 183: "A judge who observes the demeanour of the witnesses while they are being examined by counsel has, from his detached position, a much more favourable opportunity of forming a just appreciation than a judge who himself conducts the examination. If he takes the latter course he, so to speak, descends into the arena and is liable to have his vision clouded by the dust of the conflict."

Lord Justice Hodson referred to the unfamilar surroundings in the witness box, particularly during examination in chief. He confessed that he thought the judge ran a grave risk of bringing about a miscarriage of justice by interrupting so early and taking the examination in chief out of the hands of counsel. No doubt he was actuated by the best possible motives in his anxiety to understand fully what the witnesses were trying to say. But matters of this kind should be left to legal representatives and opportunity given to counsel to put questions before the judge himself put his questions; otherwise there would be the risk that the case was not fairly presented.

It may be added that when several justices are sitting together it makes matters even more difficult for advocates and witnesses if there are interventions from several members of the bench. It is most convenient for questions to be put, after the examination or cross-examination, through the chairman, or if this is not agreeable to the other members of the court then each should ask his own questions in turn. It must be most embarrassing to witnesses to be asked questions by half a dozen people in no particular order.

Maintenance Arrears

There can be no doubt that where periodical payments under orders made in the magistrates' courts are directed to be paid through the court there are far fewer disputes as to the amount owing and far more regular payers than was the case when the parties were left to their own resources and the court came into the picture only when process was actually issued for the recovery of arrears.

In the report for 1951 of Mr. Leslie Pugh, the learned clerk to the justices for the City of Sheffield, there is an interesting section showing what can be done where the business of collecting and enforcing payments is well organized.

"During the year 269 complainants and defendants were advised by letter that arrears had accrued and the amount of the arrears. The result had been satisfactory. In response to these letters 121 items of arrears have been paid in full or are now being paid by instalments without the necessity of proceedings being taken. The number of letters sent shows an increase compared with the previous year of twenty-eight. In 1947 it was necessary to advise the parties in twenty-six *per cent.* of all the orders in force that arrears had been incurred, but by 1951 this figure fell to ten *per cent.* During the five and a half years these letters have been issued, many defendants have paid their arrears in full and have continued to comply with their orders. Many others agreed to pay by means of instalments and are still so doing without further reminders being sent.

"By the Married Women (Maintenance) Act, 1949, it became a statutory obligation for the collecting officer to notify the complainant of the arrears. Hitherto it had only been necessary to notify the complainant in affiliation cases. In fact, in Sheffield, both complainants and defendants in maintenance and affiliation orders have for nearly six years been notified of arrears due and the existing system in this respect anticipated the changes made by the Act."

Further, arrangements are made for holding a special court once a week for the purpose of dealing with the enforcement and variation of such orders.

It is clear that these methods are proving successful.

"Six hundred and thirty-eight summonses or warrants to enforce payment of arrears due under Maintenance and Affiliation orders were heard by the court during the year. In 261 of these cases commitments were granted but suspended in order to give the defendants an opportunity of paying the arrears by means of a small weekly amount in addition to the normal order. The majority of the remaining 377 cases were paid before the hearing.

In other cases, where the court was satisfied that the defendant could not, by reason of his circumstances, fully comply with the weekly payment, the hearing was adjourned from time to time, until his position improved or action had been taken to obtain a reduction in the amount of the order."

It appears that the number of men actually taken to prison was only seventy-one for maintenance and seven for bastardy arrears, and it may be that in some of these cases, at all events, the woman received some of the money by reason of part payment in prison.

Summing-up at Length

Summing-up to a jury is a difficult art, and chairmen of quarter sessions and recorders sometimes feel diffident about it when they are new to such work. They have the last word with the jury, what they say will be treated with respect and attention by the jury, and it is therefore of the utmost importance that what they say should be accurate and adequate. Criticism of a summing-up not infrequently appears as a ground of appeal to the Court of Criminal Appeal.

It is not often that a summing-up is criticized for over-elaboration, but of course it is possible for a jury to be hindered rather than helped if the summing-up lacks the concise and clear style that helps to make the perfect summing-up. Recently, when the Court of Criminal Appeal heard the appeals of two men against their conviction, the Lord Chief Justice said that the court had been provided with a transcript of the summing-up by a recorder which placed them in some difficulty. The issue in the case was an extremely simple one and could, in his Lordship's opinion, have been summed up in half an hour. The recorder in fact took three hours and the court thought that it was one which was of such inordinate length that it could only confuse and not instruct the jury. The case was one in which the court, if it had the power to do so, would have ordered a new trial, but they had no such power and the only thing which they could do was to quash the conviction in the case of both appellants.

This is by no means the first time that reference has been made to the absence of a power to order a new trial, and perhaps the question will be considered in due course when legislation on criminal procedure and jurisdiction is being prepared.

A Prisoner on his Sentence

There is most hope that punishment may prove reformative when it is felt to be deserved and is not resented as being harsh. The man who knows he has done wrong and feels he has got no more than he deserves may respond to good influence in prison and leave it with some hope of making good. The man who feels he has been hardly dealt with is inclined to succumb to the first temptation that offers itself, and this is particularly true of the man who believes he has been punished more for his past record than for the offence in respect of which he was sentenced.

A man who was sent to prison for nine months by the learned Recorder of Birmingham, on a charge of breaking and entering, said: "I appreciate your leniency." It was stated that after having been convicted eighteen times he had kept straight for six and a half years. Why he had relapsed does not appear in the newspaper report, but it is evident that the Recorder gave full weight to the fact that the man had kept out of trouble for so long.

As the man regards himself as having been leniently treated, there is every reason to be hopeful about his future. Something will be done to help him while he is in prison, and he will not be without help if he asks for it upon his discharge.

Expenses of Magistrates' Courts Committees

While it is generally accepted that justices should not receive remuneration in respect of their duties, the provision for the payment of travelling and lodging expenses made by s. 8 of the Justices of the Peace Act, 1949, is welcome, since there is no good reason why justices should be actually out of pocket, and in some cases they cannot afford to be. The Act is becoming operative in stages, magistrates' courts committees have been set up, and it is reasonable to expect that from now onwards there will be more and more occasions for justices to attend meetings and conferences, including courses of instruction.

Inquiries having been made of the Secretary of State as to the expenses of members of magistrates' courts committees in attending the London conference of representatives of magistrates' courts committees on March 26 and the expenses of members of county magistrates' courts committees in travelling to meetings of their committees, the Home Office issued a circular numbered 65/1952, and dated March 6.

When s. 8 comes into force on April 1, 1953, expenses will be payable in accordance with its provisions. As to the interim period, the circular states:

"The Minister of Housing and Local Government will be prepared, during the interim period up to and including March 31, 1953, on receipt of individual applications from: (*a*) county councils, and (*b*) county borough councils and non-county borough councils whose accounts are wholly subject to district audit, to sanction under the proviso to s. 228 (1) of the Local Government Act, 1933, the payment of the reasonable and necessary travelling expenses and/or lodging allowances (*see* below as to rates) of justices of the peace in attending: (i) meetings of magistrates' courts committees of which they are members, and (ii) the conference of representatives of those committees to be held in London on March 26, 1952, and any conferences convened for a similar purpose during the financial year 1952/53.

"The individual applications for sanction referred to above should be submitted to the Ministry of Housing and Local Government at or about March 31, 1952, and March 31, 1953, when the total amount of the payments made during each of the financial years 1951/52 and 1952/53 respectively is known.

"Until the regulations provided for in s. 8 (6) of the Justices of the Peace Act, 1949, are made, the payments to justices of the peace in respect of travelling expenses and subsistence should not exceed the rates prescribed in the case of members of local authorities by the Local Government (Members' Allowances) Regulations, 1948 (S.I. No. 1784) as amended . . ."

Juvenile Offenders and Publicity

From the reports of probation committees and of probation officers we not only gain information, partly statistical, about the work of the courts and of the officers in various areas, but also get glimpses of light on some of the problems connected with the courts.

A question which is frequently discussed, and on which opinions are sharply divided, is that of the absence of publicity about juvenile offenders. On the balance, we incline to the view that the policy of prohibiting the publication of names and other particulars of those appearing in the juvenile courts is sound. Nevertheless, we were interested to read the opinion of Mr. G. E. Hedley, probation officer for the county of Westmorland, in his annual report for 1951. He states that there is no wave of juvenile crime in the area, and goes on: "Steady behaviour in the county is largely due to it being almost all rural and divided into small units where a person cannot live in anonymity as in the city, but has to face public opinion which can be a punishment and a very strong deterrent."

Mental Cruelty

The word "cruelty" means the same whether it be used in Divorce Court or magistrates' court proceedings; *Lane* v. *Lane* [1896] P. 133. Consequently, decisions of the superior courts on this subject must be followed, so far as they are applicable, by magistrates, always remembering that as a ground for summary proceedings the cruelty must be persistent.

As long ago as 1895 it was decided in *Russell* v. *Russell* P. 15, approved on appeal in [1897] A.C. 395, "That for cruelty to be a ground for relief there must be danger to life, limb or health, bodily or mental, or a reasonable apprehension of it." There have been numerous cases in which conduct not involving violence but injurous to health, has been accepted as evidence of cruelty of the kind which is sometimes referred to as mental cruelty.

Jamieson v. *Jamieson* (*The Times*, March 21) reached the House of Lords by way of the Scottish Courts, and was a case of alleged mental cruelty in which the wife alleged that her husband evidently intended to impose his will upon her, kept her short of money, humiliated her, said he hated the sight of her and on at least one occasion threatened her, the result being that she was on the verge of a complete breakdown. The Scottish Courts had found that the facts averred by the wife did not constitute such cruelty by the husband as was required to support an application for divorce. The House of Lords allowed her appeal. In the course of his speech, Lord Normand, observed that as regards the question whether the defender's conduct was to be judged by reference to its probable effect on the health of a pursuer of normal susceptibilities, or whether it in fact caused her mental suffering and consequent injury to health, he was inclined to accept the view that the conduct alleged must be judged up to a point by reference to the victim's capacity for endurance, in so far as that capacity was or ought to be known to the other spouse. In the present case the appellant averred a case of actual intention to hurt, and her averments were in his opinion relevant and supported by sufficiently specific instances of the respondent's alleged cruelties. He considered that the action should go to proof.

Lord Reid said that the averments alleged a deliberate course of conduct intended to wound and humiliate the appellant and persisted in by the respondent, although it was obvious that this was seriously affecting the appellant's mental and physical health. There could hardly be a more grave matrimonial offence than to set out on such a course, which might consist of a number of acts each of which was serious in itself, but might well be even more effective if it consisted of a long continued series of minor acts no one of which could be regarded as serious if taken in isolation.

Petty Sessional Divisions

Petty Sessional Divisions (Review) Regulations, 1952 (S.I. No. 385) dated February 26, have been made under s. 18 of the Justices of the Peace Act, 1949, and came into force on March 10. They deal with reports and proposed orders under that section with respect to the division of a county into petty sessional divisions, and they prescribe requirements as to notice and as to the manner in which, and the times within which, objections may be made.

The New Rule Committee

By the Justices of the Peace Act, 1949 (Commencement No. 4) Order, 1952 (S.I. No. 462 (C 3)) dated March 10, s. 15 of the Justices of the Peace Act, 1949, and Part II of the Seventh Schedule to that Act, were brought into force on March 24, 1952.

Section 15 deals with the power of the Lord Chancellor to make rules as to the practice and procedure in magistrates' courts, and to appoint a rule committee with whom he may consult for this purpose. The strength of the committee and the extent of its functions appear from the section itself. Part II of the Seventh Schedule is concerned with procedural provisions in various statutes.

Variations of Relaxation of Taxation

Changes of income tax in the recent national budget are even more interesting than usual in the sphere of public administration owing to relatively greater emphasis on relief in the higher salary ranges than has been customary for about a decade. Disparities in reliefs are heightened by the effect in the lower salary ranges of partial withdrawal of food subsidies, offset in varying degrees by an increase of family allowances. Some further effects, partly dependent on optional spending, on domestic budgets remain to be seen as results of, among other changes, higher duties on motor fuels, changes in purchase tax, increased Post Office charges, and the new excess profits levy in so far as this may be passed on to customers.

Varying effects produced by changes of income tax, food subsidies and family allowances are most noticeable in respect of married couples with two children. Ignoring deductible superannuation contributions, income tax on family allowances, and some details, this class suffer a net loss of £8 from a salary of £400 *per annum*, gain £14 at £600, £29 at £800 and £48 at £1,000 *per annum*; thereafter, the rate of gain slows down and is about £60 at £2,000, £2,5000 and £3,000 *per annum*. Single persons are treated more favourably in amount of net gain than married, with or without children, nearly up to salaries of £800 a year; a notable instance is at £600 a year where the single person has a net gain of £23 compared with £8 by a married couple with one child. The amount of gain for the five classes from single to married with three children becomes about equal in the region of £30 on a salary of £800, and thereafter the married with children show some gain in amount, though less certainly in relation with domestic responsibilities, above single persons and progressively in each class in accordance with number in family.

No argument can be sustained that the direct, and some of the indirect, effects of the budget proposals will be a net loss in some of the lower salary ranges where sheer necessities claim the whole or a high proportion of income, and larger gains as the rungs of the salary ladder are climbed to incomes where added spending power is normally devoted in increasing measure to amenities. Against a background of utopian conceptions, or misconceptions, in which all men would be presumed equal in value basically and in terms of equal success in uniform effort for self-improvement in all circumstances, those variable effects would obviously be wrong. The bulk of human nature is still, however, primeval in instinct in wanting tangible incentives to effort, and there can also be no argument that a lightening of taxation in the higher salary ranges will be not merely an incentive to effort by aspirants but obviate some dissuasion of suitable candidates from seeking higher appointments in which their abilities could be advantageously employed. A favourable view of immediate effects on higher salaries may be modified by suspicion that there is more positive gain than lightening of heavy taxation because, partly owing to the lengthy persistence of high tax, rates of remuneration have tended to be settled on bases akin to tax-free amounts; a point could be reached in tax relief, in conjunction with other circumstances, at which bodies who have negotiated

substantial increases in the higher ranges of official salaries during recent years would consider some reversion to lower maxima.

Local authorities will think some of the budget changes are quizzical when recalling insistence that their expenditure and commitments, apart from housing, should be diminished, especially as educational provision is under the impact of abnormally high post-war birth-rate. A high ratio of yield from local rates collectable in post-war years suggests that marginal capacity has widened, and income tax reliefs estimated at £229 million in a full year, even taking account of various offsets, maybe thought to enhance that capacity. A lot depends on the effect of the budget on the balance between production and consumption of national wealth. If production can be stimulated, partly by reliefs from taxation on earned incomes, there will be a greater volume of goods and services, which are the real foundation of the standard of living, available for consumption partly through the agency of local authorities.

PROBATION AND CHANGE OF RESIDENCE

We spoke recently of an amendment of the Probation Rules, 1949, with regard to salaries, and of a further similar amendment which may be in the offing. A different aspect of probation about which the Home Secretary may have to think further arises from s. 3 (2) of the Criminal Justice Act, 1948. This subsection directs that a probation order shall name the petty sessional division in which the offender (that is to say, the person who has been convicted and is being made subject to a probation order) " resides or will reside." The subsection has sometimes been looked upon as requiring, or empowering the court to require, the offender to reside in the division named in the probation order, but this is not its effect. The court has power to require the probationer to reside in a division selected or approved by itself, but, if it does so, this is by a requirement under subs. (3) or subs. (4), which by virtue of subs. (5) must be explained to the offender in ordinary language before the order is made. The " naming " under subs. (2) is not the imposing of a requirement, but the recording of a fact, and this fact can be established without the imposing of any requirement of residence under subss. (3) and (4). The fact thus recorded settles which probation officer it is who will have supervision of the offender. It must be an officer " appointed for or assigned to that division." Only one petty sessional division can be named – the conjunction is " or," and there is no provision for naming both the area of present residence and the area of future residence. Since the offender's present residence, if known, will appear in other records of the court, and the important thing, for purposes of probation, is where he will next reside (which may be his present place of residence, or some other place) it is not at first sight clear why the subsection gives the alternative of naming his present place of residence at all. We believe the object, when the Act was passed, was to enable the court to bridge the gap, in the not uncommon case in which it requires an offender while upon probation to live in a petty sessional division where he will be out of touch with old associates, but is informed that this new place of residence cannot be arranged immediately. A lad is brought before a London court, say at Saffron Hill, and is remanded for inquiries. The probation officer attending that court is able to find out that the lad's home surroundings are such that at home he is unlikely to go straight, and is also able to inform the court that in a month's time a home and employment can be found for him at Much Binding. If Much Binding be named, *i.e.* the petty sessional division where he " will reside," it becomes the statutory duty of the probation officer for that division to have him under supervision—which cannot be done until he goes there. Hence the inclusion of the alternative of the division where he " is residing." This is not without its difficulties : suppose, for example, that the lad convicted of theft by the magistrate at Saffron Hill has a suburban home, from which (like the magistrate), he comes daily up to town to business—to exercise his " industry," as Mrs. MacHeath, née Peachum, described the captain's means of livelihood. If the suburban petty sessional division be named, it is the probation officer down there who has to supervise. But in many cases the present residence is within the petty sessional division in which the conviction occurs, so that the effect of naming the present residence is that supervision automatically rests with a probation officer who knows what is in the mind of the court which has made the order in the first place.

Now, however, there comes a doubt about the proper working of the Act. The order, we have seen, can name the present division of residence (say Saffron Hill) or a future division (Much Binding), but not both. If it names Saffron Hill, in London, which in the case we are postulating (for the sake of avoiding a further complication) is also the area of conviction, must Much Binding be named instead, by an amendment of the order, as soon as the lad goes to reside there in accordance with the arrangements made for him by the probation officer? Superficial reading of the Act suggests this, but the Act does not say so, and we gather that the prevailing opinion among London magistrates at any rate is that the Act did not intend to say so. If Much Binding be written into the order when first made in preference to Saffron Hill, as being the place where the lad " will reside " when arrangements are completed, or if it be inserted by amendment afterwards, two consequences follow. By the latter part of s. 3 (2) the probation officer at Much Binding must supervise the lad, and by the definition in s. 80 (1) the Much Binding justices become the supervising court, with power under sch. 1 to amend the probation order. Some magistrates, at any rate, in London and we believe elsewhere, think that better results will be obtained if the probationer continues to be supervised by a probation officer attached to the court which was first seized of the case, and if that court alone continues to possess the power of amendment. Some force is added to this view by r. 51 of the Probation Rules, 1949 (S.I. 1949 No. 1328. L.11), which makes it one of the duties of the probation officer having supervision of the probationer to visit the probationer's home from time to time, unless there is a good reason for not doing so. One " good reason " obviously exists where the home is not a fit place for the probationer to go back to after the probation period ; another would be that the supervising officer was in a distant part of the country. But the apparent intention of the rule is that the supervising officer shall act as a link between the probationer and his home, so that, if the probationer is residing elsewhere, his return home may be facilitated if, in due course, it is the right place for him to go.

For this purpose, and for the purpose of keeping the probationer within the sphere of influence, so to speak, of the court which at the time of his conviction had occasion to go into his antecedents, this school of thought prefers, having named the present residence in the original order, to keep its name therein, even when the residence has changed.

This may mean supervision at long range. Charlie Bates went to Northamptonshire when Fagin's gang was broken up, and, on the long range plan of supervision, the Saffron Hill probation

officer would have had to go to Northamptonshire to " meet him frequently," as r. 51 prescribes. It is perhaps for this reason that r. 55 (5) of the same Rules makes it the probation officer's duty, when the probationer has changed his residence, to apply to the supervising court to have the name in the order changed, unless the probationer himself has done so or there is reason to believe that the probationer is unlikely to remain for a reasonable time.

This duty of the probation officer would not matter much, even upon the view of the merits taken by this school of thought, were it not for something else ; the supervising court (which, so long as the name is not changed will, in the case we have taken, still be that at Saffron Hill) could—but for that " something else " decline to accede to the application.

But the " something else " is something odd, on any view. It is the enactment in para. 2 of sch. 1 to the Act, that the supervising court, while it " may " substitute a new name of a place of residence on application by the probationer, " shall " do so if the probation officer applies. Odd though it is, that the court has no option but to accede to an application by its own officer, the oddity cannot be cured without amendment of the Act.

Rule 55 of the Rules of 1949 can, however, be altered at any time if the Home Secretary is convinced that alteration is expedient.

We have some sympathy with the policy which, we imagine, underlies the rule made in 1949 and now in force, *viz.*, that " long range " supervision over a probationer who is residing, voluntarily or by virtue of a requirement under s. 3 (3) or (4), at a distance from the petty sessional division named in the order is costly if it is to be efficient, and, if the probation officer does not spend time and money (both paid for by the public) upon travelling, may not be efficient. Probation Officer Brownlow may be able to get down to Northampton to meet Bates fairly often, but this costs money : if he does not go often how can Bates get at him when some trouble crops up on which he wants advice meantime ? The whole essence of probation surely is that the officer and the offender shall be in easy reach, one of the other. On the other hand, the combined effect of para. 2 of sch. 1 to the Act and r. 55 (5) of the Rules may be unduly rigid. We think there may be a case for some alteration of the rule, perhaps enabling the probation officer to take the instructions or seek the guidance of the supervising court, or of the case committee, before lodging the formal application with which, once lodged, the court is bound to comply by the language of the schedule.

THE REPRIEVE OF DEFENCE REGULATION 68 C.A.

[CONTRIBUTED]

The simple inclusion of Defence Regulation 68 C.A. in the Supplies and Services (Continuance) Order, 1951, made under the Supplies and Services (Transitional Powers) Act, 1945, bears little testimony to the long discussion in the House of Commons on November 14, 1951. The original intention of the Government was that the regulation should be allowed to lapse upon the view that the conversion of housing accommodation to non-residential use was adequately covered by the Town and Country Planning Act, 1947. This was not readily acceptable to the House and, as a result, the regulation is reprieved in the 1951 Order for one year, pending discussion between the Minister and the Association of Municipal Corporations.

The Defence Regulation provides, that, as from October 30, 1945, it is no longer permissible, except in certain cases, to use any accommodation, which has since December 31, 1938, been used for residential purposes, for other purposes, unless the consent is obtained of the council of the county borough, borough, urban district, or rural district, or Common Council of the City of London. The prohibition does not apply to the use of the property for purposes other than housing, when that use was in existence on October 30, 1945, or to the continuance of the same use by partners or successors in title. It does not apply to the use of any accommodation by a person residing in the building in which the accommodation is situated. A professional man is thus enabled to convert part of his house into an office or surgery. " Residential purposes " covers hotels, hostels, boarding houses, and lodging houses, as well as ordinary houses and flats.

The regulation was a product of the war years. Mr. Bevan, introducing the regulation, said that the only cases where the use of housing for non-residential purposes should be allowed was where the accommodation was considered to be thoroughly unsuitable for living in and incapable of being made suitable without uneconomic expenditure of labour and materials. It was only in the rarest cases that an ordinary house or flat should be permitted to change to another use. The Defence Regulation was introduced at a time of extreme shortage of housing accommodation, when it was necessary to see that when houses became vacant they were not converted into office accommodation or other uses for which an unrestricted rental could be obtained. It was a time of requisitioning of empty premises. The position was perhaps accentuated by the fact that in those days of blitz, office accommodation was at a premium.

In 1952 the housing need still persists. The only question that arises is whether the position is adequately met by planning control. There is the view, expressed by Mr. Derek Walker Smith, M.P., that (in effect) planning matters are dealt with by the district councils under delegated powers, and if there is an appeal, the same Minister, namely the Minister of Housing and Local Government, will hear the appeal. In support of this argument can be traced the strong association between local government and housing that has existed since they were first allied in the Housing, Town Planning &c. Act, 1909. In the normal event planning would be expected to control matters of change of use. The need for reg. 68 C.A. in the period immediately after the war was (on this view) based on the non-existence of planning control.

The contrary view, expressed by Mr. Blenkinsop, is that the housing authority is not the planning authority in every case, and both authorities are jealous of their powers. To elaborate on this point of view, the right perspective appears to be this. Historically, planning and housing powers are separate and distinct. Housing authorities are the county boroughs and county district councils : planning authorities are the county boroughs and county councils. Delegation of planning powers varies from county to county. Some county districts have full powers and some very little. Even in the county boroughs, where the same authority is responsible for decisions under the Defence Regulation and under planning, it is quite probable that two different committees will make the decisions, and it is in theory possible that the change may be allowed under housing and not under the Defence Regulation and *vice versa*. If there is an appeal on either count, the Minister of Housing and Local Government will decide the case, but that is only because this Minister appears

to have appropriated to himself almost all powers relating to local government. Originally appeals under Defence Regulation 68 C.A. went to the Minister of Health and planning appeals to the Minister of Town and Country Planning. Even now, separate sections of the Ministry deal with the two types of appeal. The appeal on planning is a public inquiry granted as of right; that under the Defence Regulation a private hearing at the discretion of the Minister.

The true approach to an application under Defence Regulation 68 C.A. would appear to be this. The matter is one which has no reference to the future of the town as such. Districts which are not of a residential character contain residential accommodation. Can the housing committee, who have perhaps thousands of applicants on their waiting list, afford to allow such accommodation to be taken out of housing purposes? In the North houses exist, in large numbers, in the shadow of large factories, town centres, and offices. By relation to the town plan they ought in course of time to give way to more appropriate development and the people be rehoused in the suburbs. The member of the housing committee has to deal with the practical needs of the moment, and to decide on housing grounds whether it can be afforded. It is significant that such matters as slum clearance are based on the ability to rehouse, so it is perhaps not inappropriate that the committee are given power under the Defence Regulation to conserve housing accommodation. It is equally significant that reference was made in the debate to the concern that was felt in the North of England, which is the home of the large factory towns.

Reference has been made to the jealousy of the district councils concerning their privileges. This is not difficult to understand. The local authority are urged to build more houses even at the expense of size; they bear the brunt of the criticism levied by those in need. They have in the past had wide powers of requisitioning empty houses; now when the housing shortage is still serious, they perhaps feel that they are responsible for controlling the future use of existing houses. How far the county council with its remote control can gauge the housing need and how far planning can properly cover pure questions of housing are matters for speculation.

It may be suggested that, in two cases at least, the planning powers given by the Act of 1947 would not cover the control exercised under the Defence Regulation. If the house is in an area zoned for commercial or non-residential use, the planning authority on amenity grounds could hardly support its retention as a dwelling-house. Another case is where a trade use existed at the appointed day in premises that had had a residential use since 1938. Planning law could not prevent a change, within the use classes, but the housing authority under the Defence Regulation could force a reversion to housing unless the same trade were continued.

All these, and no doubt many other matters, will be discussed if and when the Minister discusses the matter with the Association of Municipal Corporations, and their deliberations will no doubt decide whether the regulation is to be continued after the end of the year. R.P.C.

CHIEF CONSTABLES' ANNUAL REPORTS, 1951

For the past three years extracts from the annual reports of the chief constables of England and Wales have been a feature in this journal. The information has proved of considerable interest to those connected with the magistrates' courts, local government and even in a wider sphere.

From time to time we have suggested that such varied and valuable matter should follow a common format. This would provide a ready means of making comparisons, and also facilitate reference. We note with pleasure that in a number of Reports this has been done, with beneficial results.

1. BLACKBURN

The area is 8,088 acres and the population 122,791. Authorized establishment is 183 and the actual number engaged at the end of last year was 158; in addition sixteen civilians are engaged with the force.

Wastage during the year included two men who retired on pension, one probationer whose services were terminated, and thirteen constables who resigned for the following reasons: more congenial work; domestic reasons; more lucrative employment; to join H.M. Forces and one transfer to another force. Against this loss of seventeen the number recruited was thirteen.

Street accidents caused six deaths and personal injuries in 209 cases; compared with 1950 there was a decrease of one fatality, but an increase of fifteen in the number of injuries.

Special constabluary establishment is 100, including twenty-seven members of a mechanized section; the effective strength is fifty-eight.

Dealing with crime the Report indicates that during 1951 the number of indictable offences reported was 615. Sixty-three *per cent.* were detected compared with sixty-seven *per cent.* the year before. The property involved was valued at £7,801 of which £3,028 was recovered.

Charges of drunkness numbered 139 against 131 in 1950.

2. EASTBOURNE

The area of the county borough is 11,356 acres and the population 57,000. The establishment authorized by the Home Office is 114 with fifteen civilians in addition; there were ten vacancies in the force at the end of last year.

Resignations numbered eleven and the intake was seven, altogether sixty-seven applications to join the force were received. Reasons for rejection were: below the educational standard; over age; below height; medically unfit and sixteen candidates were regarded as unsuitable.

The active strength of the Special Constabulary was seventy men and three women; that is 170 men and three women below strength.

Crimes reported to the police were 832 of which seventy-eight *per cent.* were detected; in 1950 there were 682 crimes of which sixty-four *per cent.* were cleared up.

There was a decrease of two in the number of offences of drunk in charge of motor vehicles, and an increase of seven in charges of drunkenness, compared with 1950. There are 128 licensed premises and thirty registered clubs.

Road accident fatalities for 1951 and the two previous years were five, one and four respectively, and the numbers of injured for the same years were 274, 239 and 213.

3. DUDLEY

The area of Dudley is 4,065 acres and the population 62,536. The establisment is 107 and there were ten vacancies at the end

of the year. On the subject of recruiting the report reads: "In the early part of the year recruiting became very slow and finally came to a standstill . . . I received inquiries from only twenty-eight persons, and of these four men were appointed . . . However, since the welcome increase in pay in August last, it was soon noticed that recruiting had been stimulated . . ."

Indictable offences reported to the police numbered 688, thirty-three more than in 1950; fifty-eight *per cent.* were detected against sixty-five the year before. Juveniles prosecuted for crimes totalled 114, the same number as in 1950.

Road accidents caused five fatalities, and injuries to 151 people, an increase of two deaths and five injuries on the year before.

There are 210 premises licensed to sell intoxicants and twenty-eight registered clubs. Convictions for drunkenness totalled thirty-three, compared with forty-four in 1950.

The Report for Dudley is admirably classified under six sections, namely: Administration, Crime, Statistics, Civil Defence, Welfare, Miscellaneous.

4. ROCHDALE

The area of the borough is 9,556 acres and the population 88,930. Authorized strength is 164 and the actual number engaged at the end of 1951 was 145. Thirteen members left the force and twenty applicants were appointed during last year. "Of the appointments twelve transferred from other forces, two rejoined the service and there were only six direct entrants. This is rather disappointing considering the increased pay awarded to all federated ranks on August 3, and shows that there is still a diffidence to join a disciplined service such as the police without commensurate amenities . . ."

During last year five men were enrolled in the special constabulary and two resigned, the strength of the corps in sixty-four.

Dealing with housing the report reads: "Forty-six post war brick houses and twelve pre-fabricated bungalows are now occupied. Ten more are in process of being built and an additional six are scheduled, but building has not commenced. Sites for a further six have yet to be selected. The police authority also owns five more houses which they have had since before the beginning of the late war. Seven houses are let by the Housing Committee to the Watch Committee. Fourteen houses on the Fire Brigade estate are still occupied by police officers and this figure will be eventually reduced to ten. Every police officer needing a house has been provided for . . ."

An experiment started in Plymouth to reduce the amount of night work has been tried in Rochdale: "Throughout the history of this force it has been the custom for half the available strength of the uniform patrol constables to be engaged on night duty whilst the other half shared morning and afternoon duty . . ." The result of the experiment shows that one-fifth of the available strength is now engaged between 2 *a.m.* and 6 *a.m.* and two-fifths at all other times . . ."

Indictable offences numbered 1,039 an increase of 138, fifty-five *per cent.* were detected. The value of property involved in criminal offences was £20,277 and that recovered £11,858.

Road accidents reached the total of 585 against 654 the year before; there were four fatalities and 312 people injured. In 1950 two people were killed

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Somervell, Denning and Romer, L.JJ.)

EVERETT *v.* RIBBANDS AND ANOTHER

March 12, 13, 1952

Malicious Prosecution—Plaintiff bound over by court of summary jurisdiction—Competency of action—Summary Jurisdiction Act, 1879 (42 *and* 43 *Vict., c.* 49), *s.* 25.

APPEAL from Devlin, J. (115 J.P. 582).

On the hearing of an information laid by a police officer at the instance of a third person the plaintiff was ordered by the magistrate to enter into a recognizance and to find two sureties to keep the peace and be of good behaviour for twelve months or in default to serve one month's imprisonment. In an action by the plaintiff against the police officer and the third person for damages for malicious prosecution,

Held, by virtue of s. 25 of the Summary Jurisdiction Act, 1879, the proceedings before the magistrate could have been determined in favour of the plaintiff; they were not so determined; and, therefore, no action for malicious prosecution lay.

Stewart v. *Gromett* (1859) (29 L.J.C.P. 170), distinguished.

Decision of Devlin, J., (115 J.P. 582), affirmed.

The plaintiff appeared in person.

Counsel: *Pearl* for first defendant; *G. Howard* for second defendant.

Solicitors: *Gale & Phelps*; *Solicitor Metropolitan Police*.

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

PROBATE, DIVORCE AND ADMIRALTY DIVISION

(Before Lord Merriman, P., and Karminski, J.)

February 21, 1952

RICHMOND *v.* RICHMOND

Divorce—Connivance—Adultery by husband—No condonation by wife—Continuation of connivance—"Natural consequence" of wife's connivance—Husband's desertion and wilful neglect to maintain.

APPEAL by husband from an order of Southampton justices.

In August, 1950, the husband and the wife went on a caravan holiday with Mr. and Mrs. B, the husband then committing adultery with Mrs. B and the wife with Mr. B, each party knowing of the adultery of the other. Shortly after the return home of the husband and wife, the wife gave up her adulterous association with Mr. B. In June, 1951, Mrs. B gave birth to a child of which the husband admitted paternity, and on Nov. 15, 1951, he left the matrimonial home and went to live with Mrs. B, and since that date he had paid no maintenance to the wife. The justices found the husband guilty of adultery, desertion, and wilful neglect to maintain, and made an order for maintenance in the wife's favour. On appeal by the husband,

Held, (i) the husband's adultery in August, 1950, had been connived at by the wife; there was no finding by the justices that this adultery had been condoned; and, therefore, her connivance continued in existence and she was not entitled to an order on the ground of the husband's adultery.

Gorst v. *Gorst* (1951) (115 J.P. 634) distinguished.

(ii) the husband's conduct in leaving the wife and failing to pay her maintenance was not the "natural consequence" of her connivance at his adultery, and, as her own adultery had been connived at by the husband, she was entitled to an order for maintenance on the grounds of desertion and wilful neglect to maintain.

Counsel: *Willett* for the husband; *Brodrick* for the wife.

Solicitors: *Geoffrey Wells & Woodford*, Southampton; *Bernard Chill & Partners*, Southampton.

(Reported by G. L. F. Bridgman, Esq., Barrister-at-Law.)

IN THE LIST

In times of paucity of news
Amongst the things that make us smile
Are names of books that chaps would choose
To take upon a desert isle.
The matter's one that hasn't yet
Been raised at all before the courts
But if it were some one I bet
Would then suggest the Law Reports.

In them at least you'd surely find
The range of literature combined.

J.P.C.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

When the House of Lords debated cruelty to children, Lord Goddard, the Lord Chief Justice, declared that the law as it stood was perfectly adequate to deal with such cases. What was needed was a further application of the law and the impressing upon magistrates from time to time of the fact that they ought not to deal with cases summarily merely because they had power to deal with them in that way.

The fact was that there was a great tendency to ask the magistrates to deal with those cases summarily. Under the Criminal Justice Acts now in force, the prosecution could start by asking a bench to deal with a case summarily. The bench were not bound to do it, and if in the course of hearing a case they came to the conclusion that it ought to go for trial, it was perfectly open to them to order it to go for trial.

But, of course, when a bench of magistrates had before them an advocate instructed by a reputable society, or by the police, who asked them to deal with the case summarily, he was not sure that the bench could be blamed because they complied with that request.

He went on to say, however, that magistrates ought to be more ready to send cases for trial. It was curious that so many prosecutions were brought under the Children Act, when the cases might have been brought under the ordinary law of the land. Charges ought to be preferred under the Offences against the Person Act. But even if the case was brought under the Children Act, the magistrates could still send it for trial. The penalties were, on summary conviction, a fine of £25 and six months' imprisonment and, on indictment, a fine of £100—which was generally inappropriate because it was not possible for the people convicted to pay it—or sentences up to two years' imprisonment. If magistrates would make freer use of their powers, and if prosecutors would consider putting forward different charges, more serious and more appropriate charges, when serious crimes were committed against children, he believed that people would be satisfied.

"There is nothing more dangerous than to get the criminal law either at variance or out of touch with public opinion," said Lord Goddard, "public opinion does demand that there shall be adequate and, indeed, severe sentences in many of these cases."

He went on to say a word to magistrates about neglect cases. These could be sharply divided into two categories. There were the cases of deliberate and wilful neglect, in which the parents went out drinking and left the children alone at home. But there were also cases in which the mother was a slattern, and her children lived in horrible and verminous conditions. That second class of case might be due to negligence, but not wilful negligence. In some instances those women were more sinned against than sinning; what they needed was help, not punishment.

The Lord Chancellor said he agreed that the duty of magistrates, where the offence was a serious one, was not to pass sentence themselves, but to send the case to trial. He understood that that was the view taken by the Home Office also, and that the police, where a crime which was reported to them appeared to be of sufficient gravity, would demand either that the original prosecution should not be in a court of summary jurisdiction but by indictment in a higher court, or where it had been started in a court of summary jurisdiction that it should be taken to a higher court.

Lord Strabolgi, who had initiated the debate, said that the N.S.P.C.C. had decided that, in future, in the very severe or the more serious cases, they would take proceedings to a higher court, and in the worst cases they would proceed under the Offences against the Person Act, 1861.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 30.

DEFENDANT'S MUSIC WAS NOT APPRECIATED

A twenty-two year old man appeared before the Oxford City Magistrates on February 22 last, charged first with assault and battery, contrary to s. 42 of the Offences against the Person Act, 1861, and secondly, with using a noisy instrument, to wit, a mouth organ, when a passenger in a public service vehicle carrying passengers, to the annoyance of other persons, contrary to reg. 9 (12) of the Public Service Vehicles (Conduct of Drivers, Conductors and Passengers) Regulations, 1936.

For the prosecution, evidence was given that defendant was playing a mouth organ on the top deck of a bus at 10.15 *p.m.* Other youths were shouting and singing, and twice the conductor asked defendant to stop playing as the noise made it impossible to collect fares. Defendant then hit the conductor with the mouth organ.

Defendant, who pleaded guilty to both offences, was fined £2 on the first charge and 10s. upon the second charge, and ordered to pay £1 12s. costs.

COMMENT

Regulation 9 of the 1936 Regulations, which were made by the Minister of Transport by virtue of ss. 84 and 85 of the Road Traffic Act, 1930, details seventeen prohibited acts for passengers while in public service vehicles and the twelfth prohibited act is to use or operate to the annoyance of other passengers, any noisy instrument, or make or combine with any other person or persons to make any excessive noise by singing, shouting or otherwise.

(The writer is indebted to Mr. John Broughton, clerk to the Oxford City Justices, for information in regard to this and the two following cases.) R.L.H.

No. 31.

A CHIMNEY ON FIRE

An Oxford resident pleaded guilty last month when charged at Oxford City Magistrates' Court with being the occupier of certain premises in the City and allowing a chimney there to catch fire and burn contrary to s. 31 of the Town Police Clauses Act, 1847.

Defendant was fined 7s. 6*d*.

COMMENT

Section 31 of the Act provides, first, that any person who wilfully sets or causes to be set on fire any chimney, may be fined £5. The section also provides that if any chimney accidentally catch or be on fire, the person occupying or using the premises may be fined 10s., but there is a proviso to this part of the section to the effect that a conviction shall not be recorded if the defendant proves that the fire was not due to the omission, neglect or carelesssness of himself or servant. R.L.H.

No. 32.

THE SAUSAGES WERE FAULTY

Three summonses were preferred against a limited company carrying on business as butchers at Oxford City Magistrates' Court in February last. The first charge alleged that the company, in selling a pound of sausages containing a preservative, sulphur dioxide, failed to cause them to be labelled accordingly, or to cause a notice to the effect that the said sausages contained preservative, to be exhibited in a conspicuous place so as to be easily readable by a customer, contrary to reg. 4 (2) (*b*) of the Public Health (Preservatives &c. in Food) Regulations, 1925 to 1940, and s. 101 of the Food and Drugs Act, 1938. The second charge alleged that the company had sold, to the prejudice of the purchaser, certain food, namely a pound of sausages, which was not of the substance demanded by the purchaser, in that the said sausages contained 1,150 parts per million of sulphur dioxide, being a proportion in excess of that permitted under the Public Health (Preservatives &c. in Food) Regulations, 1925 to 1940, contrary to s. 3 of the Food and Drugs Act, 1938. The third charge alleged that the company had sold a pound of pork sausages, the meat content of which was less than the minimum meat content prescribed as respects pork sausages by sch. 1 to the Meat Products and Canned Meat (Control and Maximum Prices) Order, 1948, as amended by the Meat Products and Canned Meat (Amendment) Order, 1950, the Meat products and Canned Meat (Amendment) Order, 1951, and the Meat Products and Canned Meat (Amendment No. 2) Order, 1951, contrary to art. 3 of the Order of 1948 as amended by the subsequent orders, and contrary to reg. 55 of the Defence (General) Regulations, 1939.

For the prosecution, it was stated that analysis had shown that the sausages contained only forty *per cent.* of meat while the legal minimum was fifty-five *per cent.* The amount of preservative found exceeded that allowed.

For the defendant company, who pleaded guilty to all charges, the managing director stated that 10,800,000 pounds of sausages had been made without complaint. A few days after he knew that a sample of the sausages had been taken, but before he heard that charges were to be preferred, he found an employee operating the sausage making machine incorrectly. Instead of distributing the ingredients evenly in the automatic mixing bowl he tipped each ingredient into the bowl indiscriminately.

With reference to the failure to display the notice referred to in the first charge the managing director said that it was the responsiblity of the shop manager who had them in his possession, to display them, and he had failed in his duty in this respect.

The company was fined £5 in respect of the first charge, and an order of absolute discharge was made in respect of the second and third charges and the company was ordered to pay £2 3*s*. costs.

COMMENT

It is apparent from the penalties imposed by the court that the plea in mitigation put forward by the managing director impressed the court, for offences of this nature which are difficult to detect normally carry heavy penalties.

The difficulties under which butchers labour at the present day are evidenced by the string of statutory orders enumerated in the third charge set out above. R.L.H.

No. 33.

MISUSE OF A RAILWAY TICKET

A fifty-one year old hospital matron appeared recently before the Newport County Borough Magistrates charged with travelling upon the railway between Paddington and Newport without having previously paid her fare and with intent to avoid payment contrary to s. 5 (3) (*a*) of the Regulation of Railways Act, 1889, as amended by s. 41 (1) of the British Transport Commission Act, 1950. A fifty-nine year old alderman and former mayor was charged with aiding and abetting the offence of the matron contrary to s. 5 of the Summary Jurisdiction Act, 1848.

For the prosecution, it was stated that both defendants were employed in the Newport area, the alderman being a railway executive relief booking clerk. The defendants alighted from the train at Newport at 1.0 *a.m.*, and the male defendant handed to the ticket collector the return half of a first class ticket issued on a bulk travel voucher saying " That is her ticket." Inquiries which were made showed that the bulk travel voucher was issued by the local corporation to enable the male defendant to travel to London on council duty and the male defendant, when interviewed, agreed that the matron had only a third class ticket and that she had used his first class spare ticket. The matron, when interviewed, agreed that she travelled in a first class compartment with the alderman and that she had only got a third class ticket. She denied any knowledge of what ticket was handed in at Newport and said that she gave the alderman a third class ticket.

It was stated on behalf of both defendants, who pleaded guilty, that they were profoundly sorry for the " extremely foolish offences." Both defendants were fined £3.

COMMENT

It will be recalled that by s. 5 (3) of the Act of 1889 the maximum penalty for travelling on the railway without having paid the fare and with intent to avoid payment thereof was 40*s*. for a first offence. The Act of 1950 increased the maximum penalty on summary conviction to £5 but for second or subsequent offences the maximum penalty provided by the Act of 1889 of one month's imprisonment or a fine of £20 remains in force.

(The writer in indebted to Mr. R. J. Rowlands, clerk to the Newport Justices for information in regard to this case.) R.L.H.

PENALTIES

Ystrad—March, 1952—wilful neglect of a three year old child (two defendants)—each sentenced to one month's imprisonment. The child was found sleeping in a filthy wooden cot directly underneath a broken window. There was no mattress and the child was covered only by a dirty quilt. After six visits by an Inspector of the N.S.P.C.C., a new cot was bought but the child remained in the old one.

Clevedon—March, 1952—driving without due care and attention—fined £2. Licence suspended until driving test passed. Defendant, a seventy-five year old hire car proprietor, was driving a passenger to a maternity hospital when he collided with a cow in a narrow country lane. He deposited the passenger at hospital and then went to report the accident at a police station. As he drove away from the station he sheered the wing off a car parked in the road ; he than turned a corner and immediately collided with a mechanical street sweeper !

Morecambe Juvenile Court—March, 1952—sundry offences of house and shop breaking and petty larceny—fined a total of £3. Defendant, a boy of thirteen, admitted forty-four offences and was told by the Chairman that his record was the worst that had come before the Court.

Bristol—March, 1952—failing to comply with a court order to submit to a National Service medical examination—six months' imprisonment. Defendant, aged nineteen, had been earlier before the court when he pleaded guilty to failing to report for a medical examination ; he then told the court that the tribunal had refused to register him as a conscientious objector and the court ordered him to have a medical examination. It was his refusal to comply with this court order which led to the latter charge.

Portsmouth—March, 1952—sending an improper communication through the post—fined £5. To pay 22*s*. costs. Defendant, a twenty-one year old female shop assistant, sent a valentine to a married lorry driver's mate on the back of which there were written filthy words. The addressee said that the card had caused a grievance between his wife and himself. He had known defendant for five years but she had no reason to send a card of that nature.

Taunton—March, 1952—selling ham, sausages, cheese and bacon short weight (nine summonses)—fined a total of £45 and to pay 18*s*. 6*d*. costs. Cash value of the deficiencies was 2*s*. 4*d*.

Bristol—March, 1952—failing to maintain the parts and accessories of a motor-cycle in proper condition—fined £2.

Oxford—March, 1952—quitting a motor-car without stopping the engine—fined 30*s*.

Oxford—March, 1952—(1) failing to have name and address painted on the side of a cart—(2) leaving horse and cart unattended—(1) fined 5*s*., (2) fined £1.

West Riding Assizes—March, 1952—motor manslaughter—twelve months' imprisonment. Driving licence suspended for seven years. Two weeks before defendant, aged nineteen, crashed into a wall killing his passenger, he had been convicted for driving without consideration and failing to stop after an accident.

THE SPELL-BINDERS

In the leisurely times before the passing of the Parliament Act, 1911, a pleasing story was current, in Radical circles, of a noble Peer, who dreamed that he was addressing the House of Lords. He woke up, and found that he was.

This shattering experience is recalled, not out of any disrespect for the venerable Upper House of our Legislature, the roll of which has been enriched since that date by so many illustrious names, but as a remarkable example of auto-suggestion. To what extent the hypnotic effect of his eloquence diffused itself among his audience we have no means of knowing. Many of those who, in those distant days, gave rude utterance to this and similar gibes secretly found the quiescent and somnolent atmosphere of their Lordships' Chamber a matter for admiration and envy ; many a one among those same pert politicians, tiring in due course of the rough-and-tumble in the Commons, turned his ambitions wistfully to contemplate the beatific vision of ermine robe and coronet. And for many of them the same dream, in due course, came true.

Mass-hypnotism by rhetorical means has gone out of favour since its two noisiest adepts, whose posturings enlivened German and Italian politics in the nineteen-thirties, came to a bad end during the recent War. Recently, however, the practice has taken another form which, judging by letters to *The Times* and questions in Parliament, may have equally pernicious though less far-reaching effects. Exhibitions of hypnotism on the stage, as a form of public entertainment, have led in several cases to disastrous results, and the consensus of opinion appears to be that such activities should be prohibited ; with the support of the medical

profession, a Private Bill is being promoted to make these practices by unqualified persons illegal.

At the end of the Victorian Era our parents were moved to tears and indignation by the pen of George du Maurier, whose popular novel *Trilby* dealt with the sinister influence exercised by one Svengali, a practitioner of the art, upon a young girl of the Latin Quarter in Paris. His "mesmeric passes" (as they were then generally known) used to throw her into a hypnotic trance in the course of which she sang divinely, her voice (which in her waking state was tuneless and unpleasing) providing a useful income for her exploiter. Unprecedented though such a case was in medical experience at the time, and unparalleled since, the name of the villainous Svengali provided a new sensation among a public which had not yet become familiar with the writings of Siegmund Freud, Alfred Adler and the psychiatric methods they advanced. Today the pendulum has swung in the opposite direction, and no novelist, however newly-fledged, regards his accomplishment as complete until he has inflicted on his credulous readers at least one book replete with the appropriate jargon purporting to represent a psycho-analytical approach to character-study. Since many such writers make up in imaginative ability for what they lack in technical knowledge (which, judging from the contents of their works, many of them seem to have imbibed from the pages of the *Reader's Digest* and the popular illustrated weeklies), the results are apt to be startling rather than instructive.

Fifty years before du Maurier the literary possibilities of the subject of hypnotism had been exploited by the macabre genius of Edgar Allan Poe. *The Strange Case of M. Valdemar* is a weird story of a patient who was mesmerised as he was dying and held for weeks in a trance. In that vivid language of which he was a master Poe describes how, when he was at last "awakened" by the practitioner, his body putrefied and dissolved before the eyes of the beholders. A horrible tale, this, but almost carrying conviction by the verisimilitude of its descriptive detail.

Now that hypnotism has for many years played a recognizedly valuable part in psychotherapy it is somewhat surprising to find that, at any rate in England, its potentialities have not been exploited by the criminal. The latest edition of Kenny's *Outlines of Criminal Law* reproduces, unchanged, the following passage from earlier editions:

> "Our Courts, unlike Continental tribunals, have not yet become familiar with the plea that a crime was committed under the influence of post-hypnotic 'suggestion' exercised by some designing person who had induced hypnotic sleep in the offender. It remains to be seen what exemptive effect will ever be accorded in England to such 'suggestions'."

The learned author suggests, in a footnote, that unconscious automatism is already covered by the *McNaghten Rules*, but one can imagine grave injustice resulting in some future case where a patient, who has been subjected to the hypnotic influence of a criminally-disposed practitioner, may commit in a waking state an offence which he has been ordered, while in a hypnotic trance, to carry out.

It is interesting to recall that, exactly two hundred years ago, the pioneer of modern hypnotism was entering upon his academic career. Franz Anton Mesmer was born in a village on Lake Constance in 1734, early in that Age of Reason which, for fearless scientific inquiry and outstanding artistic achievement, is paralleled only by the Classical Age of Athens and by the Italian Renaissance. He qualified in medicine at the age of thirty-one, and in the thesis for his degree first made reference to a "magnetic fluid"—which, he declared, human bodies might harbour and which they might be capable of passing into the bodies of patients with curative effect. In medical practice he associated the method with electrical magnetism, and his successful treatment of many patients by hypnotic means rapidly brought him fame. In 1778 police persecution compelled him to leave Vienna for Spa and Paris. There he had great success until the jealousy of the medical profession induced the Government to set up a commission of doctors and scientists to investigate his claims. (One member of the Commission was the famous Benjamin Franklin, philosopher, statesman, scientist and man of letters, who was then diplomatic representative in Paris of the newly-founded United States of America.) The Commission's report was on the whole unfavourable. A few years later, his methods discredited, Mesmer retired to Switzerland, where he died in 1815.

Mesmer did not limit himself to scientific studies. An accomplished musician himself, he delighted in the society of musical people. His house in Vienna became famous as a *salon* where young composers could rely upon having their works performed in the large drawing-room or in the natural theatre in his garden. These activities give him another claim to renown, for his first *protégé* was none other the Wolfgang Amadeus Mozart, whose father Leopold was one of Mesmer's lifelong friends. In 1768, when Wolfgang was a child of twelve, his opera *La Finta Semplice* was favourably received by the Emperor Joseph II, but its performance in Vienna was frustrated by the intrigues of jealous rivals. To compensate him for his disappointment Mesmer commissioned a new work from the boy-composer, and *Bastien and Bastienne*—a charming and melodious one-act opera—was performed before a distinguished audience in Mesmer's garden-theatre. The friendship was long continued and Wolfgang's letters to his family bear frequent witness to the kindly help and affection bestowed upon him, during his struggle for recognition, by the great physician. It is pleasant to record that, twenty-one years later, at the height of his success, Mozart paid graceful tribute to his old friend and patron in the musical medium both loved so well. Abused and rejected by his medical contemporaries, Mesmer is immortalised in the exquisite *rococo* of *Cosi Fan Tutte*—"Women Are Like That." Set to the witty *libretto* of Lorenzo da Ponte, combining dramatic unity and gentle satire with musical brilliance, this is the perfect opera—the masterpiece of a master. The plot is simple: the action scintillating. Two young officers are persuaded by the cynical old bachelor Alfonso to test the constancy of their lady-loves. Ostensibly called away on active service, they return in disguise, and each woos the other's mistress. Rebuffed at their first attempt, the two suitors pretend to take poison; while the girls stand helpless in terror, Alfonso calls in a disciple of the great Dr. Mesmer, gowned and bespectacled, and armed with an enormous magnet. (Only the audience and the men know that the learned doctor is really the versatile maid, Despina, dressed up.) Drawing the magnet across the bodies of the sufferers, the "doctor" explains its curative powers, and with the appropriate "mesmeric passes" (accompanied by a responsive quivering in the patients' limbs, and represented by a prolonged *tremolo* in the orchestra) successfully restores the patients to vigorous health. So effective is the treatment that the ladies rapidly succumb to the charms of their new suitors; the wedding preparations are interrupted by the "return" of the two officers in their usual garb, and after the usual misunderstandings and explanations all ends happily.

Two years later the era of tasteful discrimination in art and clear-sighted rationalism in thought was closing in the welter of the French Revolution, and the two great spell-binders had vanished from the European scene. The father of modern hypnotism was a disappointed exile in Switzerland; the greatest musician of all time was dying in poverty, his frail body consumed by his febrile and prolific genius, at the age of thirty-five.

A.L.P.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

I refer to the contributed article entitled "The Closed Shop" appearing in your issue of March 8, and to the sentence at the head of the second column of p. 151 which reads "thus whilst a trade union may bring a dispute about a single workman, a workman as an individual cannot bring his own dispute."

This, of course, is wholly erroneous and is the opposite of the very basis of the judgment in the South Shields decision.

The trouble with the Industrial Disputes Order, 1951, is that a single individual cannot refer a dispute neither can a union in respect of one individual.

See also the Editorial Note in *Re Birkenhead Corporation's Resolutions, Quigley* v. *Birkenhead Corporation* [1951] 1 All E.R. 262.

Yours faithfully,
A. NORMAN SCHOFIELD,
Town Clerk.

Town Hall,
Watford.

[We do not think it is "of course," as this letter suggests, nor indeed that the passage quoted from our contributor Ephesus is wrong, though it might have been expressed with less dangerous brevity. Upon the present letter, Ephesus writes to us: "Although hardly in case, perhaps, of a town clerk, a dispute may essentially concern one workman. The Lord Chief Justice said in the town clerk's case '. . . What we do decide is that there must be a dispute between an employer and more than one workman in his employ, though it may be that the dispute originates with a single workman, and that the others only become parties to the dispute in support of one member of their body . . .'."—*Ed., J.P. and L.G.R.*]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

With reference to P.P. 11 at 116 J.P. 141, I recently acted for a client who successfully appealed by way of Case Stated to the Divisional Court against a decision of justices. The case was prepared by me but finally approved by the respondent's solicitor and the clerk to the justices. The Taxing Master on taxation refused to allow the justices' clerk's fee maintaining that where a case is in fact drawn by the solicitors for the appellant no fee is payable to the justices' clerk.

Yours faithfully,
LESLIE J. SLADE.

Solicitor,
Newent,
Gloucestershire.

[We have, of course, great respect for the opinion and decision of the Taxing Master, but we should like to suggest for consideration that the decision, at that stage of the proceedings, to disallow the fees raises serious difficulties, and may be open to question.

It can be argued, we think, that as these fees are fixed by or under statute as those to be taken, and as the case, whoever prepares the first draft, is the case stated by the justices there is no authority for disallowing the fee. The fee is for "drawing case and copy" and we understand the argument to be that if the draft of the case is prepared in the first instance by the appellant a fee is not lawfully chargeable by the clerk to the justices for "drawing the case."

The practice by which the draft of the case is prepared by the appellant, and this draft is amended by the respondent before it is submitted to the justices, is a convenient way of giving the parties a chance to suggest how they would like the matter to be put before the High Court. But the original decision and the reasons for it are those of the justices, and it is their statutory duty to see that the case as stated properly expresses that decision and those reasons. The draft case submitted to them nearly always requires minor or major amendments, and has sometimes to be ignored. Is it to be argued that unless they do everything, from the first draft onwards, no fee is chargeable? If not, how much amendment is necessary to the draft submitted by the parties before a fee is chargeable? In the latter event how is the Taxing Master to inform himself as to how much work the justices did in the matter?

Clerks to justices will obviously need to know where they stand in this matter, and it is very desirable that an authoritative decision of universal application be arrived at as soon as possible.—*Ed., J.P. and L.G.R.*]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

SALE OF FOOD (WEIGHTS AND MEASURES) ACT, 1926 MEAT SOLD BY BUTCHER TO CATERER—WHETHER RETAIL SALE

Adverting to P.P. No. 18, which appeared on p. 80 of your February 2 issue, permit me to make the following comment.

The many definitions of "sale by retail" quoted by your questioner do not include the definition in the Meat (Prices) Order, 1951, S.I. 1951 No. 415. Sale by retail therein means, "Any sale other than to a person buying for the purpose of re-sale, and includes any sale to a person for the purposes of a catering business carried on by him." It can, therefore, be established that in so far as price control is concerned the sale of meat to a catering establishment is a sale by retail within the terms of the Order.

One can envisage considerable difficulties in the path of a defending advocate who tries to esablish that for the purposes of the Sale of Food (Weights and Measures) Act, 1926, meat to which the Meat (Prices) Order applies was not sold by retail.

Under the present Ministry of Food set-up regulating the sale of meat all butchers are permitted to sell only be retail, and the maximum price schedules covering their sales relate to retail prices only. The only permitted wholesalers of meat is the Wholesale Meat Supply Association who are the sole distributive agents for the Ministry of Food. This Association is a limited liability company which was formed at the instigation of the Ministry of Food from existing wholesalers at the commencement of the last war.

We have instituted proceedings under the Sale of Food (Weights and Measures) Act, 1926, on a number of occasions for offences concerning the sale of butchers' meat to catering establishments, and so far we have not experienced difficulty in this connexion. We have not, however, been challenged in this respect, and I do not know of any case where, in fact, such a challenge has been made.

Yours faithfully,
W. R. BREED,
Chief Inspector.

Weights and Measures Department,
County Hall,
Dorchester, Dorset.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, March 25

AGRICULTURE (POISONOUS SUBSTANCES) BILL, read 1a.
DENTISTS BILL, read 3a.
METROPOLITAN POLICE (BORROWING POWERS) BILL, read 2a.

Thursday, March 27

PRISON BILL, read 1a.
CONSOLIDATED FUND (No. 2) BILL, read 3a.

HOUSE OF COMMONS

Monday, March 24

CONSOLIDATED FUND (No. 2) BILL, read 1a.
CINEMATOGRAPH FILM PRODUCTION (SPECIAL LOANS) BILL, read 3a.
EXPORT GUARANTEES BILL, read 3a.

Tuesday, March 25

CONSOLIDATED FUND (No. 2) BILL, read 2a.

Wednesday, March 26

HOUSING BILL, read 1a.
CONSOLIDATED FUND (No. 2) BILL, read 3a.

Thursday, March 28

NATIONAL HEALTH SERVICE BILL, read 2a.

NEW COMMISSIONS

NORTHAMPTON COUNTY

Robert Henry Nevile Dashwood, Farthinghoe Lodge Farm, Farthinghoe, Brackley.
John Collins De Freyne, Blankenberge, Warwick Street, Daventry.
Mrs. Jean Jackson-Stops, Wood Burcote Court, Towcester.
Mrs. Helen Clark Smyth, 18, Maple Grove, Corby.
John Bosworth Wakeford, Milestone, London Road, Daventry.
Mrs. Kathleen Gertrude Ward, Hall Farm, Kelmarsh, Northampton.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Bankruptcy—*Proof of debts—Set-off.*

X Co., Ltd., has three contracts with a local authority for the erection of houses, and the company goes into compulsory liquidation before contracts are completed. The R.I.B.A. standard form of contract is applicable, and the council completed the works.

The contracts, when completed, resulted as follows: Contract 1. £200 due to the liquidator; Contract 2. £100 due to the liquidator; Contract 3. £3,000 due from the liquidator to the council.

The liquidator states that the sums of £200 and £100 due in respect of contracts 1 and 2 should be paid to him, and that the council should prove for the £3,000 due under contract 3. My opinion is that the council should prove for £3,000, less the £300 in respect of contracts 1 and 2, and that the three contracts constitute a single claim. Your advice will be appreciated. FISO.

Answer.

We agree with your view. We consider that in a case like yours where there have been mutual dealings between a company in liquidation and a creditor who is claiming to prove a debt, then an account can be taken of what is due from each party to the other in respect of such mutual dealings, the respective sums being set-off against the other: Bankruptcy Act, 1914, s. 31; *Peat* v. *Jones* (1881) 51 L.J.Q.B. 128 (especially *per* Jessel, M.R.); *Re City Equitable Fire Insurance Co.* (1930) 99 L.J.Ch. 536 (judgments in both courts).

2.—Bastardy—*Agreement—Effect of bankruptcy.*

H entered into an agreement with S for periodical payments for the maintenance of S's bastard child. H has now been adjudicated bankrupt and contends that he is discharged from further obligations under the agreement, the decision in *Victor* v. *Victor* [1912] 1 K.B. 247 being analogous and that the Bankruptcy Act, s. 28 (1) (*c*) does not help S as it only relates to an affiliation order. Is H correct? SLETH.

Answer.

At 2 *Halsbury* 579 it is stated, in relation to a contract between the putative father and the mother, that the father is not discharged by his bankruptcy, and the case of *Millen* v. *Whittenbury* (1808) 1 Camp. 428 is cited. In that case Lord Ellenborough, C.J., said: "If any arrears accrued before the bankruptcy, the certificate will be a discharge as to these; for the plaintiff might have proved them under the commission; but could she have set an aggregate value upon the defendant's promise to allow her a weekly sum for the maintenance of the child, and received a dividend for that? As no proof in respect of the subsequent arrears would have been admitted under the commission, I am of opinion that the defendant is still liable for them in this action."

Upon this authority it seems that H's contention is not correct.

3.—Building Licence—*Maximum rent fixed—Application to increase after work completed.*

A builder purchased a house and applied for, and obtained, a licence to convert it into five flats. A condition of the licence was that the flats should not be let at more than the maximum rents specified in the licence. When the licence was granted, the builder did not consider the amounts fixed for maximum rents and the local authority had fixed the rents on an "estimated purchase price" for the house in its unconverted state, plus the cost of conversion in accordance with the licence figure. In fact, the actual purchase price was higher than the estimate and the builder also had to bear solicitors', surveyors' and architects' fees and stamp duty on the conveyance, none of which was taken into consideration by the local authority when fixing the maximum rents. The conversion is now complete and the builder has applied to the local authority to increase the maximum permitted rents, which would be reasonable taking into account the actual purchase price and agents' fees. Have they power to do so? None of the flats has yet been let or occupied. CONL.

Answer.

There is now no power to increase the figure.

4.—Fishery—*Rating of private fishery—Poaching prosecutions.*

This River Board is concerned with the administration of the Salmon and Freshwater Fisheries Act, 1923, and certain local orders made under Part IV thereof. Under one of these orders the Board is empowered to impose, collect and recover in a summary manner contributions to be paid by the owners of private fisheries, based on assessed value. One owner in the fishery district has refused to pay his contribution on the ground that the fishery adjacent to his property as riparian owner is not private, that is, he reaps no financial benefit thereout as he permits all members of the public to fish therein without fee: the previous owner had erected notices forbidding "public" fishing. A summons has been issued and the case is down for hearing a month hence. Can an owner in whom there is undoubtedly vested a private fishery, convert that fishery into a public fishery, and thus evade his obligations, namely by allowing the general public to fish his waters without fee.

(2) From time to time the Board also prosecutes offenders for illegal fishing, etc. Recently objection has been taken on the ground of duplicity to an information which alleges, for example, using a light for the purpose of taking salmon or trout: it is argued that the prosecution must decide what fish was intended to be caught, that is salmon or trout; this can lead to some difficulty when the river concerned is tidal and bass for instance may be found thereon. Is such an objection sound law? DAIL.

Answer.

(1) The actual order is not before us, but, unless the word "private" is shown by context to bear some other meaning, we think it must refer to the nature of the right, not to the owner's practice. The owner could at any time exclude the public.

(2) Since the section speaks of salmon, trout, or freshwater fish (as defined) we do not think a summons is bad which alleges an intent to take salmon or trout. If the "instruments" other than the light, which are found in the possession of the fishermen, are such as would be used for fish which may lawfully be caught, the inference to be drawn is matter of evidence and probability: *Marshall* v. *Richardson* (1889) 53 J.P. 596, but the justices can convict even though the instruments are capable of innocent use: *Hill* v. *George* (1880) 44 J.P. 424.

5.—Food and Drugs—*The Food Standards (Table Jellies) Order, 1949—The Food Standards (General Provisions) Order, 1944, art. 1—Defence (Sale of Food) Regulations, 1943 and 1945, reg. 2.*

On June 7 last, a sampling officer of this Food and Drugs authority called at a grocery shop and purchased six table jelly tablets. He checked the weight of each tablet and each weighed five ounces. Each jelly tablet was wrapped in a greaseproof paper on which was printed the following:

"Manufactured and packed by A Ltd., Barchester, Silverbridge, and Framley. An A Product 'The Sign of Food Goodness' Ingredients Syrup, Gelatine, Fruit Juice (as available), Tartaric Acid, Flavour and Colour. Directions, etc. . . . '————' Table jelly Lemon Flavour minimum net weight five *ozs.*"

Later the sampling officer obtained the relevant invoice from the proprietor of the grocery shop which stated that two dozen "——" jellies were obtained from B & Sons, Ltd., on November 23, 1950. This invoice had a covering warranty.

The sampling officer then visited B & Sons, Ltd., and saw the invoice which was said to cover these jellies. They were dispatched by rail from A Ltd., Barchester, on November 14, 1950.

After purchasing the six jelly tablets at the grocery shop the sampling officer weighed each tablet then divided each tablet in turn into three pieces, putting one piece from each tablet into three separate jars until each of the three jars contained six one-third tablets or the equivalent weight of two whole tablets. Each jar was then sealed and numbered, one being handed to the proprietor of the grocery shop, the second being forwarded to the public analyst while the third was retained by the sampling officer.

The public analyst reported that the sample failed to comply with the setting test prescribed by the Food Standards (Table Jellies) Order, 1949, inasmuch as the contents of all six beakers collapsed immediately upon removal. He further reported that the sample contained only 50.5 *per cent.* sugar as against the minimum of sixty-three *per cent.* prescribed by the same order.

As three other Food and Drugs authorities have had occasion to complain regarding A table jellies (when informal samples were taken) it has been decided to institute proceedings against A Ltd. under the above-mentioned orders.

I have drafted an information as follows:

"The information of . . . who states that A Limited whose registered office is situated at did on the day of 1951 unlawfully sell to B & Sons Ltd., whose registered office is situated at a food under the description table jellies, which did not comply with the standard for table jellies prescribed by the Food Standards (Table Jellies) Order, 1949, contrary to art. 1 of the Food Standards (General Provisions) Order, 1944, made in pursuance of reg. 2 of the Defence (Sale of Food) Regulations, 1943 and 1945.

" The said . . . further states that in pursuance of art. 4 (3) of the said Food Standards (General Provisions) Order, 1944, it appears to the S county council, being the authority entitled to bring proceedings for an infringement of the said order, that an offence has been committed in respect of which proceedings might be taken for an infringement of the said order against some person and the said S county council is reasonably satisfied that the offence of which complaint is made was due to the act or default of some other person and that the first mentioned person could establish a defence under para. (1) of art. 4 of the said order.

" The particulars of analysis are contained in the certificate of the public analyst a copy of which is attached hereto.

" Taken before me," etc.

I would very much welcome your observations on the following points that occur to me regarding the information :

(1) You will see that it is proposed to proceed direct against the manufacturers of the table jellies pursuant to art. 4 (3) of the Food Standards (General Provisions) Order, 1944 [*see Bell's Sale of Food and Drugs*, 12th edn., p. 368]. In view of the last four lines of the said art. 4 (3), do you think the information should charge A Ltd., with unlawfully selling to *the sampling officer*, that being the offence with which " the first mentioned person " might have been charged. And if the information was so worded what evidence of " act or default " would be required by the court—to prove that the contravention was due to the manufacturers " act or default." In view of note (*e*), p. 202, of *Bell*, it seems that the prosecution would have to prove actual knowledge on the part of A Ltd., that the jellies contravened the order, a very difficult, if not impossible, thing to prove.

(2) Do you consider that the method of dividing and dealing with the samples outlined above could be objected to by the defence ?

(3) Do you consider that it is necessary to refer specifically in the information to the " setting test " prescribed by the Food Standards (Table Jellies) Order, 1949, and the failure of the sample to comply therewith ? SACT.

Answer.

(1) As it is apparently intended to proceed against A by virtue of para. 4 (3) of the Food Standards (General Provisions) Order, 1944, we think the information and summons should allege the offence in relation to the sale to the sampling officer on June 7, 1951, that being the offence with which A is liable to be charged and convicted. Having recited that offence the information should refer to the relevant orders and regulations, including para. 4 (3), *supra*, and we suggest that the statement of offence should include the fact that the sale was by the grocer in question, with his address, and that A is charged as being the person to whose act or default the alleged offence was due in the opinion of the county council. The case of *Atterton* v. *Browne* (1945) 109 J.P. 25 is very much in point. As to evidence of act or default, it seems to us that if proof be given that A manufactured the jellies and that they were not tampered with before sale to the sampling officer, there is a *prima facie* case to answer.

(2) We see no cause for a valid objection, *see* cases cited in *Bell*, pp. 179, 180.

(3) This is desirable since it is always better to give the defendant full information about the allegations he has to answer.

6.—Husband and Wife—*Access to children—Insertion of provision in order made before coming into operation of Married Women (Maintenance) Act*, 1949.

We shall be obliged if you can kindly let us have your opinion on the following circumstances.

We are acting for H who was married to M in 1942. In April, 1949, M obtained an order for maintenance against H of 15*s.* per week, together with 10*s.* per week for the child of the marriage, then aged seven, and the legal custody of that child. The order was made under the Summary Jurisdiction (Married Women) Act, 1895.

In June, 1950, M obtained a decree absolute against H but there was no order for custody or maintenance and the original order remained in force. M remarried in November, 1951, and H now wishes to have the maintenance order varied so that the maintenance for the wife shall be discharged and so that H shall obtain an order for access to the child.

Can H now make application to the magistrates for a variation of the order so as to give him access to the child ?

The Summary Jurisdiction (Married Women) Act, 1895, and the Licensing Act, 1902, give power to the magistrates to make an order as to custody and there is also provision for such an order to be varied but there is no provision for access.

The Married Women (Maintenance) Act, 1949, s. 5, which came into force after the date of the order against H, empowers the court to make an order for access when provision *is* made for custody under either of the above-mentioned Acts, *i.e.*, presumably by the same order. The section does not say " is or has been " made.

Shaw and Sons form M.W.11 makes provision for an order for access but we cannot find statutory authority for an application for access and revocation of maintenance alone without an application for custody. *Questions and Answers from Justice of Peace*, 1938 to 1949, item 72, has a general bearing on this.

The note at 114 J.P.N. 3 does not assist. TEEP.

Answer.

We have dealt with this difficult point at pp. 159, 288 and 380 of last year's volume. We still think it doubtful whether an order made before the 1949 Act came into force can be so varied, but it is certainly arguable that it can, and we are inclined to advise that the justices should entertain the application. The matter could be put thus : on looking at the order, if it appears that it contains a provision as to custody it can be said that provision *is* made by the order for such custody, even though the order was made some time ago. Any such order can be subsequently varied by another order under s. 7 of the Summary Jurisdiction (Married Women) Act, 1895, or s. 30 (3) of the Criminal Justice Administration Act, 1914, and such varying order may provide for access.

7.—Landlord and Tenant—*Rent restrictions—Tenant in employer's service.*

In 1921, the borough council agreed that one of their employees on the libraries staff might reside in a flat at one of the branch libraries, although in fact he undertook no duties at that library. It was agreed that certain reductions should be made in his salary to allow for the value of the flat. The officer is about to retire, and it appears to the town clerk that the letting of the flat cannot be regarded as having been for the proper performance of the officer's duties, and that the tenancy is therefore controlled under the Rent Restrictions Acts. It has, however, been suggested that the court would not treat an officer as having paid a notional rent merely because his wages are agreed at a sum reduced by the rental value of the premises, but the case of the *Ford* v. *Langford* [1949] 1 All E.R. 483, to which reference has been made, does not appear to be conclusive, as the evidence on the question of deductions does not appear to have been very satisfactory. Is this suggestion that no tenancy may in fact exist a correct one, or would it be held that the Rent Restrictions Acts do in fact apply ? FHM.

Answer.

In this case we think the tenancy is controlled under the Rent Acts. In view of the agreement that deductions should be made from the

salary of the officer concerned, we do not think that it can be said that he is enjoying the premises rent free, which would exempt the premises from the Acts. We think he is paying a rent. We agree with the town clerk that the officer cannot be regarded as a service tenant.

8.—Magistrates—*Practice and Procedure—Town Police Clauses Act, 1847, s. 21—Order by an urban district council to prevent obstruction—Authority of police to prosecute.*

I should be glad of your opinion on the following facts. A defendant was charged with unlawful street trading on two dates contrary to an order made by the local U.D.C. under s. 21 of the Town and Police Clauses Act, 1847, the offence being that of selling ice-cream.

After the defendant had been charged and pleaded not guilty, his solicitor then made a legal submission that the prosecutor, who is also the superintendent of police for the division, was not empowered to lay the information and/or institute proceedings.

A number of authorities were cited and reference was made in particular to *Stone* (1951) 83rd edn., vol. 2, p. 2353 under the heading of " Procedure." The justices adjourned the hearing to afford the prosecution an opportunity of replying to the submission.

I have since read carefully the paragraph in *Stone* relating to jurisdiction, and two notes in your excellent paper at pp. 73 and 121 respectively of vol. 108 (1944), and my own opinion at the moment is that the defendant's submission is sound, as the order of the local U.D.C. did not go far enough, as contrasted for instance with the order made under the same section of the 1847 Act which came under review by the Divisional Court in *Etherington* v. *Carter* [1937] 2 All E.R. 528. JINX.

Answer.

On consideration of the cases cited we think that the effect of s. 253 of the Public Health Act, 1875, is that the police superintendent had no authority to prosecute in this case.

It is to be noted that under s. 21 of the Town Police Clauses Act, 1847, the directions which may be given to constables are " for keeping order and preventing any obstruction of the streets *in the neighbourhood of theatres and other places of public resort* " and not for preventing obstruction of the streets in general.

9.—National Assistance—*Removal order under s. 47 of National Assistance Act, 1948, as amended by National Assistance (Amendment) Act, 1951.*

I would be obliged if you could kindly answer the following query relative to the National Assistance Act, 1948, s. 47 (4) and the National Assistance (Amendment) Act, 1951.

Under this subsection, the court may make an order authorizing a person's detention for a period not exceeding three weeks, and the court may from time to time by order extend that period for such further period, not exceeding three months, as the court may determine. I shall be glad if you will let me have your opinion as to which of the following interpretations is correct :

(1) I am of the opinion that, having made the original order for three weeks, the extending periods may only be for not exceeding three weeks each and not exceeding three months in the aggregate.

(2) It may, however, be held that, having made the original order for three weeks, the extending periods may be up to three months in addition to the original three weeks, making a total period of three months and three weeks.

(3) It may further be held that the court may extend the original period of three weeks by further periods, each period not exceeding three months.

In view of the fact that subs. 6 is now of no effect, it would appear to support my contention that the extending periods must not exceed three weeks each, and that the total time during which a person may be detained under the Acts must not exceed three months.

I would also be glad to have your opinion as to what would be the position, in the event of my contention being correct, if at the end of the three months the person is still incapable of taking care of himself and has nowhere to go. THOMAS.

Answer.

This is a difficult question because, as our learned correspondent points out, there are at least three reasonable interpretations of the subsection. On the whole, we think the aggregate period may amount to three months and three weeks, and that, in view of the words " from time to time " it is probably correct to limit a single extension to a period of three weeks.

In the urgent cases contemplated by the Act of 1951 it should surely be possible to make the necessary provision within a period of rather more than three months, and often within three weeks. If the person concerned is allowed to return to the old conditions, a position which ought not to arise, presumably proceedings would have to be taken *de novo*.

10.—Notes of Evidence—*Supply by clerk to third party, who is defendant in other proceedings.*

Am I justified in supplying to the defendant in bastardy proceedings a copy of the notes of evidence given in matrimonial proceedings in which the wife complainant is the same person as the complainant in the bastardy proceedings? It is very material as apparently the wife in her original evidence denied intercourse with any third person at what appears to be the material time in the bastardy proceedings. TWEL.

Answer.

We endeavoured to lay down general principles in answer to questions at 106 J.P.N. 142 and 109 J.P.N. 419. In accordance with these, we think the clerk is justified in this case in furnishing the copy. What the woman said may be most material, and the clerk might be subpoenaed to give evidence of it.

11.—Water Supply—*Public Health Act, 1936, s. 138—Water Act, 1945, s. 30.*

What remedy has a local authority against a person who (*a*) makes a connexion from the main to the stop valve only and does not continue the supply into the house ; (*b*) refuses to connect his farmhouse to the water supply or to allow the council to enter on his land to carry out the work but states that he intends to lay on a supply from a satisfactory source of his own ? The required notices have been served in both cases. FLYAWAY.

Answer.

It is not clear from the facts you mention what the position is. It appears possible that the occupier has made the connexion from the main to stop-valve for the purposes of his cattle, and will lay on a private supply of his own sufficient for the domestic purposes of the farm. If this is so then the occupier could validly object to the requirements of the local authority under s. 30 (3) of the Water Act, 1945. Otherwise, if the facts warrant proceeding under the substituted subsection of s. 138 of the Public Health Act, 1936 (and the test applied here is the reasonableness of the requirements) then the local authority have their remedy under s. 138 (3) of the Act of 1936.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. (*contd.*)

Too Late for Classification

SITUATIONS WANTED

OXFORD undergraduate taking Honours Jurisprudence in June seeks position in Local Government service articled to solicitor clerk. —Box A9, office of this paper.

HAYES AND HARLINGTON URBAN DISTRICT COUNCIL

Appointment of Assistant Solicitor

APPLICATIONS are invited for the appointment of an Assistant Solicitor at the maximum salary of A.P.T. Division, Grade VII of the National Scales of Salaries, *i.e.*, £760 per annum, plus appropriate London "weighting."

Candidates should have experience in conveyancing and advocacy.

The council is able to assist the successful candidate with housing accommodation, if required.

Forms of application, and further particulars and conditions of appointment may be obtained from the undersigned, to whom completed applications should be returned not later than Monday, April 21, 1952.

A. E. HIGGINS,
Clerk of the Council.

Town Hall,
Hayes, Middlesex.

April 1, 1952.

CITY OF SHEFFIELD

Appointment of Full-time Female Probation Officer

APPLICATIONS are invited for the above appointment.

Applicants must not be less than 23 years nor more than 40 years of age.

The appointment will be subject to the Probation Rules, 1949-50 and the salary will be in accordance with the prescribed scale.

The successful applicant will be required to pass a medical examination.

Applications, stating age, present position, qualifications and experience, together with copies of three recent testimonials, should be addressed to me, the undersigned, so as to reach me not later than April 19, 1952.

LESLIE M. PUGH,
Secretary to the Probation Committee.

The Court House,
Sheffield, 3.

BOROUGH OF EDMONTON

Assistant Solicitor—Established

GRADE A.P.T. Va/VII (£600—£760) plus London "weighting" (£10—£30, according to age).

Applications, on forms obtainable from me, must be delivered by April 19, 1952.

H. BACKHOUSE,
Town Clerk.

Town Hall,
Edmonton, N.9.
April 4, 1952.

NOTTINGHAMSHIRE

Appointment of Male Probation Officer

THE Nottinghamshire Combined Probation Committee invite applications for the appointment of full-time male probation officer at a salary in accordance with the Probation Rules, 1949.

Forms of application, with conditions of appointment, may be obtained from my office, and completed forms must be received by me not later than April 21, 1952.

K. TWEEDALE MEABY,
Clerk of the Peace.

Shire Hall,
Nottingham.

COUNTY OF NORTHUMBERLAND

Petty Sessional Division of West Castle Ward

Appointment of Deputy Clerk to the Justices

APPLICATIONS are invited for the above whole-time appointment from Solicitors who have experience in magisterial law and practice, and are capable of acting as Clerk of the Court (held in Newcastle-upon-Tyne) without supervision.

The salary will be in accordance with Grade VII of the National Scales (£685×£25—£760) the commencing salary being dependent upon the experience of the person appointed.

The appointment is subject to the provisions of the Local Government Superannuation Act, 1927, and the successful applicant will be required to pass a medical examination.

Forms of application, which may be obtained from the undersigned, must be completed and returned to him not later than April 22, 1952, together with copies of two recent testimonials.

JAMES MATTHEWS,
Clerk to the Justices.

28, Sandhill,
Newcastle-upon-Tyne, 1.

BOROUGH OF BARKING

Assistant Solicitor—Grade VI/VII

COMMENCING salary will be at a point to be fixed within Grades VI/VII having regard to the successful candidate's experience.

Application form and particulars of appointment may be obtained from the undersigned and are returnable by April 24, 1952.

E. R. FARR,
Town Clerk.

Town Hall,
Barking.

COUNTY BOROUGH OF WIGAN

Appointment of Deputy Town Clerk

APPLICATIONS are invited for the appointment of Deputy Town Clerk at a salary of £1,100 per annum rising by annual increments of £50 to a maximum of £1,200 per annum.

Applicants must be admitted Solicitors with experience in a Town Clerk's Office.

Applications, accompanied by copies of three recent testimonials, should be delivered to me not later than Monday, April 21, 1952.

ALLAN ROYLE,
Town Clerk.

Town Clerk's Office,
Municipal Buildings, Wigan.

April 1, 1952.

COUNTY OF NORTHUMBERLAND

Petty Sessional Division of West Castle Ward

Appointment of Justices' Clerk's Assistant

APPLICATIONS are invited for the appointment of a whole-time Assistant to the Clerk to the Justices for the Moothall Court, Newcastle-upon-Tyne. Applicants must have had considerable magisterial experience, be competent shorthand typists, capable of issuing process and keeping the accounts.

The salary will be in accordance with the General Division of the National Scales.

Forms of application, which may be obtained from the undersigned, must be completed and returned to him not later than April 22, 1952, together with copies of three recent testimonials.

JAMES MATTHEWS,
Clerk to the Justices.

28, Sandhill,
Newcastle-upon-Tyne, 1.

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